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Some Notes on "Reliance"

C. Robert Morris*

Courts often argue that a legal result is necessary to satisfy a party's reliance or vindicate its expectations. Courts justify their conclusions by stating that it would be unjust to disappoint or thwart a perceived expectation or reliance.

I intend to analyze some of these arguments that I believe are flawed. They rarely offer any insight concerning the issue at hand; and usually they are circular — they assume reliance because they perceive that the result is just and assume the actor who is expecting justice has the same perception. I will illustrate my point with examples from various branches of the law, selecting them in no systematic manner and reflecting areas I have studied over the years.

LOGICAL DIFFICULTIES — CORPORATE CAPITAL REQUIREMENTS

I begin my analysis of reliance with cases concerning the integrity of corporate capital. We can examine this body of law dispassionately because it is no longer significant. Modern corporation statutes do not contain capital requirements because the requirements proved unworkable, failing to protect corporations' creditors.¹

The American law concerning corporate capital began with *Wood v. Dummer*,² in which Justice Story recaptured an insolvent bank's liquidating dividends for its creditors. Stating that "the capital stock of banks is to be deemed a pledge or *trust fund* for the payment of the debts contracted by the bank,"³ he ordered defendant stockholders to return a portion of their dividends to the complaining creditors.⁴ Subsequent cases, relying on the "trust fund" idea, forbade stockholders to set-off the un-

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1. See Revised Model Business Corporation Act § 6.21 and the annotations thereto, 1 MODEL BUS. CORP. ACT. ANN. § 6.21 (Supp. 1990).

2. 30 F. Cas. 435 (C.C.D. Me. 1824) (No. 17,944).

3. *Id.* at 436 (emphasis added).

4. *Id.* at 440. For a more detailed description of *Wood*, see Morris, Book

paid balance of a stock subscription against debts the company owed them⁵ and held stockholders who subscribed for shares at a discount liable for the difference between what they had paid and the par value of their shares.⁶

Justice Mitchell of the Minnesota Supreme Court did not think highly of the "trust fund" theory. In *Hospes v. Northwestern Mfg. & Car Co.*,⁷ he denounced it as "not sufficiently precise or accurate to constitute a safe foundation upon which to build a system of legal rules."⁸ He held that shareholders should be liable to creditors for the unpaid balance of the par value of their shares, even though the corporation had released them from this obligation,⁹ but he sought to put that liability on a sounder basis — the business community's reliance upon corporate capital.¹⁰ Moreover, this basis would comport with the general rule that those creditors who had advanced credit before the flawed stock issue or with knowledge of the flaw could not recover.¹¹ He reasoned:

The capital of a corporation is the basis of its credit. . . . People deal with it and give it credit on the faith of it. They have a right to assume that it has paid-in capital to the amount which it represents itself as having; and if they give it credit on the faith of that representation, and if the representation is false . . . the law, upon the plainest principles of common justice, says to the delinquent stockholder, "Make that representation good by paying for your stock." . . . It is the misrepresentation of fact in stating the amount of capital . . . that is the true basis of the liability of the stockholder in such cases; and it follows that it is only those creditors who have relied, or who can fairly be presumed to have relied, upon the professed amount of capital, in whose favor the law will recognize and enforce an equity against the holders of "bonus" stock.¹²

Arguments from reliance are usually based on an arm-

Review, 61 MINN. L. REV. 1035, 1036-43 (1977) (reviewing B. MANNING, A CONCISE TEXTBOOK ON LEGAL CAPITAL (1977)).

5. See, e.g., *Sawyer v. Hoag*, 84 U.S. (17 Wall.) 610, 622 (1873). In *Sawyer*, a shareholder who had given his note in payment for the stock of an insurance company bankrupted by the Chicago fire was not permitted to set off a claim against the company on a policy it had issued on a house destroyed in that fire. *Id.*

6. See, e.g., *Upton v. Tribilcock*, 91 U.S. 45, 47 (1875) (stockholder who had been promised he need only pay 20% of the par value of the shares to which he subscribed held liable for the remaining 80% in the company's ensuing bankruptcy).

7. 48 Minn. 174, 50 N.W. 1117 (1892).

8. *Id.* at 192, 50 N.W. at 1119.

9. *Id.* at 197, 50 N.W. at 1121.

10. *Id.* at 198, 50 N.W. at 1121.

11. See *id.* at 196-97, 50 N.W. at 1120-21 and cases cited therein.

12. *Id.* at 197, 50 N.W. at 1121.

chair hunch. Certainly Justice Mitchell's was. He cited no evidence concerning the creditors' attitudes. Rather, he took judicial notice of those attitudes as he supposed them to be. It is, of course, difficult for us almost a century later to know how accurate he was. It may have been that irregularities in the issuance of stock were so common that many, or even most, creditors expected them and did not actually rely on representations of corporate capital.

Another problem with arguments from reliance arises when determining whose reliance shall be paramount. We can expect that adversaries have contrary hopes or fears. The common stockholders in *Hospes* expected to enjoy their status as common stockholders *gratis*.¹³ Justice Mitchell states that the stockholders had "[a] desire to get something without paying for it,"¹⁴ but he makes no further mention of this matter. Undoubtedly, he considered the stockholders' ambitions unworthy.

The clash between incompatible expectations can be better illustrated by a recurring conflict between stockholders and creditors in which the equities are more in balance. In a recent bankruptcy case,¹⁵ a corporation's two stockholders had a falling out and resolved their difficulties when one sold his stock to the corporation for its \$1.4 million note, secured by a security interest in all the company's assets.¹⁶ After assuming this new burden, the corporation remained solvent and made monthly payments on the note for over three years, at which time it became insolvent and filed for bankruptcy.¹⁷ The bankruptcy court ruled that the ex-stockholder's claim was unenforceable and that the security interest was void.¹⁸ Again, the court reasoned from the "trust fund" theory:

[S]hareholders have a special relationship with the corporation different from other creditors of the corporation. Thus, they assume the risk when agreeing to accept payment at a subsequent time for the exchange of their stock, that the corporation will remain solvent and enjoy future profitability from which their debt will be satisfied. This was aptly reasoned in the *In re Fechheimer Fishel Company* case wherein the court stated that a stockholder who accepts a note for the redemption of his stock "sells at his peril and assumes the risk of consummation of the transaction without encroachment upon the funds which belong to the corporation in trust for the payment of its

13. *Id.* at 191, 50 N.W. at 1119.

14. *Id.*

15. *In re Northwest Oxygen, Inc.*, 99 Bankr. 703 (Bankr. M.D.N.C. 1989).

16. *Id.* at 704.

17. *Id.*

18. *Id.* at 708.

creditors."¹⁹

If the court focuses on the expectations of the creditors, however, it will reach the opposite conclusion. On similar facts, another court held that the filing of the security interests put subsequent creditors on notice that the company's assets were encumbered.²⁰ The court reasoned that because the creditors were expecting those assets to be devoted to paying the secured debt in preference to themselves, the ex-stockholder could prevail.²¹ These cases illustrate that when the parties have conflicting expectations, it is important which set of expectations the court honors, because that choice determines the outcome. That choice, of course, depends on other factors often unarticulated and known only to the judges themselves.

But, there is a further difficulty. Though expectations can be thought to determine the law, the law can also be thought to shape expectations. Those subsequent creditors, even if they were aware of the ex-stockholder's security interest, might have concluded it was void on "trust fund" grounds, and therefore they would still expect to be paid. For instance, Delaware neither adopted the "trust fund" theory nor followed the *Hospes* case.²² Instead, it construed its corporation statute as requiring shareholders who subscribed to stock to pay any unpaid balance of par if necessary to satisfy unpaid creditors of the company.²³ All creditors could take advantage of this rule, including those who knew of the underpayment when they advanced credit.²⁴ Does this rule give such creditors an unwarranted windfall? In *Dupont v. Ball*,²⁵ the Delaware Supreme Court reasoned that it did not:

We are clearly of the opinion that mere knowledge that stock issued as full paid and non-assessable was not in fact paid for, should not preclude the creditor from enforcing the liability of the holder because the creditor may also know or have good reason to believe that the holders of such stock would be legally liable for the debts of the company to the extent of the par value of their stock. While the creditor with knowledge could not have given credit upon faith that the stock was paid for, he may very well have given credit upon the belief that the holder of the stock would be liable to the creditors under the

19. *Id.* at 708-09 (quoting *In re Fechheimer Fishel Co.*, 212 F.2d 357, 363 (2d Cir. 1914)).

20. *Tracy v. Perkins-Tracy Printing Co.*, 278 Minn. 159, 167-68, 153 N.W.2d 241, 246 (1967).

21. *Id.* at 168, 153 N.W.2d at 246-47.

22. *See* *DuPont v. Ball*, 11 Del. Ch. 430, 444, 106 A. 39, 45 (1918).

23. *Id.* at 441, 106 A. at 43.

24. *Id.* at 444, 106 A. at 45.

25. 11 Del. Ch. 430, 106 A. 39 (1918).

statute whether he had paid for it or not.²⁶

In other words, a liability which would not exist under *Hospes* because a creditor aware of the discount had not relied, would be decreed under *Dupont* because an informed creditor aware of the law of Delaware would have relied.

Reliance, then, can be used to justify any established, well known rule of law. Rules that burden, by imposing on some or leaving others at risk, will cause actors to expect such burdens or risks; conversely, rules that benefit, by rewarding some or protecting others, will cause actors to expect such rewards or protections. In short, all rules will sustain the reliance interest they engender, whatever it may be.²⁷

So what are we to make of Justice Mitchell's reliance argument in the *Hospes* case? In an attempt to find a sound basis for the "trust fund" theory, he began with an unarticulated premise that the basis existed, so that the corporation's creditors could rely on it.²⁸ To invoke that premise, he unconsciously weighed the worthiness of incompatible ambitions: those of the creditors to get paid and those of the stockholders to avoid personal liability.²⁹ In short, he had to decide the case on the legal merits as he saw them. He then announced that the law is that which the "trust fund" cases had already estab-

26. *Id.* at 444, 106 A. at 45.

27. The circularity of the reliance principle was recently illustrated in *Burnham v. Superior Court*, 110 S. Ct. 2105 (1990), in which the Supreme Court upheld the jurisdiction of a California court over the defendant based solely upon service upon his person while he was transient in California. The Court was unanimous in its outcome but squabbled about its reasons. Justice Brennan gave as one reason that "[t]he transient rule is consistent with reasonable expectations and is entitled to a strong presumption that it comports with due process. 'If I visit another State, . . . I knowingly assume some risk that the State will exercise its power over my property or my person while there.'" *Id.* at 2124 (Brennan, J., concurring) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977)). Justice Scalia, accurately but somewhat intemperately, rejoined that the mental attitude Justice Brennan perceived was a result of a rule of law, not the basis for it. *Id.* at 2118. In fact, Justice Brennan's logic was more seriously flawed than Justice Scalia indicated. If Mr. Burnham had gone on vacation to Paris instead of visiting his children in California, he would have also taken the risk that France would exercise its power over his property or person while there, but it would not follow that he had taken the risk of being sued in French courts concerning American transactions. French courts, like courts in other civil law countries, do not claim jurisdiction over transients. Other contacts with France, such as residence, nationality, locus of the tort or of performance of the contract, are necessary. See R. SCHLESINGER, H. BAADE, M. DAMASKA, P. HERZOG, *COMPARATIVE LAW* 382-397 (5th ed. 1988).

28. *Hospes v. Northwestern Mfg. & Car Co.*, 48 Minn. 174, 192-95, 50 N.W. 1117, 1119-20 (1892).

29. *Id.* at 196-99, 50 N.W. at 1120-21.

lished.³⁰ His argument from reliance is really only a statement of his belief that he is not eccentric — that the plaintiffs, had they been judges, would have reached the same conclusion he had reached and that therefore he would disappoint their reasonable expectations unless he decided it that way.

Underlying these cases are policies concerning the allocation of risk. A court that ignores this point can easily make a serious mistake. For instance, to assure the integrity of corporate capital, many states have constitutional provisions prohibiting corporations from issuing their stock in consideration of the subscriber's unsecured promise to pay.³¹ In *Stone v. Hudgens*,³² the court refused to enforce a subscriber's promise to a bankrupt Oklahoma corporation. The obligation had been carried on the company's books as an asset labelled "subscriptions receivable."³³ The court reasoned that any creditors' reliance "was at most predicated upon a misapprehension of the legal collectability of this listed receivable."³⁴ Knowledgeable creditors would know the transaction was illegal and void, would not expect the stockholder's promise to be enforceable and would not, therefore, rely on it. Other courts, aware that the provision was for the protection of creditors, have furthered its policy by refusing sanctuary to stock subscribers who have violated its provisions.³⁵

THE FALLACY IN A CONTEMPORARY SETTING — SEARCH AND SEIZURE³⁶

Since 1967, the Supreme Court has held that to invoke the protection of the fourth amendment, "there is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'"³⁷

30. *Id.* at 197, 50 N.W. at 1121.

31. See ARIZ. CONST. art. 14, § 6; UTAH CONST. art. 12, § 5; WASH. CONST. art. 12, § 6.

32. 129 F. Supp. 273 (W.D. Okla. 1955).

33. *Id.* at 274.

34. *Id.* at 276.

35. *E.g.*, *McCarty v. Langdeau*, 337 S.W.2d 407, 411 (Tex. Civ. App. 1960) ("The constitutional provision was not intended as a shield for the stockholder who has not paid for his stock. . . . It was designed for the protection of the corporation and its creditors.") (quoting *Joy v. Godchaux*, 35 F.2d 649, 652 (8th Cir. 1929)).

36. I am indebted to my colleague, Daniel Farber, for bringing this issue to my attention.

37. *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

This formulation begs the question, however, because United States citizens' expectations are based, in part, on the fact that they do not live in a police state. It also obscures the merits, which require the balancing of American ideals of liberty with a need for surveillance.

Just last term, the Supreme Court held that the warrantless arrest of one Olson, an overnight guest in an apartment he was visiting, violated his fourth amendment rights.³⁸ Justice White wrote: "Because [Olson's] expectation of privacy in the Bergstrom home was rooted in 'understandings that are recognized and permitted by society,' . . . it was legitimate, and respondent can claim the protection of the Fourth Amendment."³⁹

Justice White did not discuss Olson's actual expectations.⁴⁰ Because Olson had driven a car for a hold-up and murder (a fact he readily admitted immediately upon his arrest), he suspected the police wanted him and might have obtained a warrant. The police had learned he was preparing to flee. They surrounded the apartment and then gave telephone instructions to the host that Olson should come out. When he did not, they entered, found him hiding in a closet, and arrested him.⁴¹ The facts suggest that Olson had a justified and reasonable fear of the police. He may not have been aware of the fine points of search-and-seizure law and simply expected this police raid. But, if he were sophisticated, he knew facts that made it likely that the police could obtain a warrant and that the raid was likely in any event.

It is fortunate that the Court did not consider Olson's actual expectations, for that would have gutted the fourth amendment. Justice White, considering "the understandings that are recognized and permitted by society,"⁴² imposed his value judgment that a guest in another's home should be free from police intrusions in the absence of either permission or a warrant. The discussion concerning Olson's expectations was superfluous.

The previous term, the Court heard two cases challenging regulations that subjected some classes of employees to drug

Though this formulation was in a concurring opinion, the Court has since adopted it. See *Smith v. Maryland*, 442 U.S. 735, 740 (1979).

38. *Minnesota v. Olson*, 110 S. Ct. 1684, 1687 (1990).

39. *Id.* at 1690.

40. See *id.* at 1686-90.

41. *Id.* at 1686-87.

42. *Id.* at 1690 (quoting *Rakas v. Illinois*, 439 U.S. 128, 144 n.12 (1978)).

tests. In each case, the Court upheld the regulations, holding that the tests did not violate the employees' fourth amendment rights because their specific callings gave them "diminished expectations" of privacy.

In the first case, concerning customs employees, Justice Kennedy observed:

[I]t is plain that certain forms of public employment may diminish privacy expectations even with respect to such personal searches. Employees of the United States Mint, for example, should expect to be subject to certain routine personal searches when they leave the workplace every day. Similarly, those who join our military or intelligence services may not only be required to give what in other contexts might be viewed as extraordinary assurances of trustworthiness and probity, but also may expect intrusive inquiries into their physical fitness for those special positions. . . .

We think Customs employees who are directly involved in the interdiction of illegal drugs or who are required to carry firearms in the line of duty likewise have a diminished expectation of privacy in respect to the intrusions occasioned by a urine test. Unlike most private citizens or government employees in general, employees involved in drug interdiction reasonably should expect effective inquiry into their fitness and probity. Much the same is true of employees who are required to carry firearms. Because successful performance of their duties depends uniquely on their judgment and dexterity, these employees cannot reasonably expect to keep from the Service personal information that bears directly on their fitness. . . . While reasonable tests designed to elicit this information doubtless infringe some privacy expectations, we do not believe these expectations outweigh the Government's compelling interests in safety and in the integrity of our borders.⁴³

In the second case concerning some railroad employees, Justice Kennedy again discussed their diminished expectations of privacy:

[T]he expectations of privacy of covered employees are diminished by reason of their participation in an industry that is regulated pervasively to ensure safety, a goal dependent, in substantial part, on the health and fitness of covered employees. . . .

We do not suggest, of course, that the interest in bodily security enjoyed by those employed in a regulated industry must always be considered minimal. Here, however, the covered employees have long been a principal focus of regulatory concern. . . . Though some of the privacy interests implicated by the toxicological testing at issue reasonably might be viewed as significant in other contexts, logic and history show that a diminished expectation of privacy attaches to information relating to the physical condition of covered employees and to this reasonable means of procuring such information. We conclude, therefore, that the testing procedures [here contemplated] pose

43. *National Treasury Employees Union v. Von Raab*, 109 S. Ct. 1384, 1393-94 (1989).

only limited threats to the justifiable expectations of privacy of covered employees.⁴⁴

Certain it is that after these cases, the employees' expectations were diminished; but Justice Kennedy seems to be saying that the expectations had always been diminished — that the litigants foolishly hired attorneys to protect rights they had already knowingly relinquished. Unlike the facts in *Olson*, these cases offer no indication of the employees' actual state of mind. Justice Kennedy infers a diminished expectation from previous intrusions. In other passages, however, he seems to be saying that society would not be prepared to recognize as *reasonable* any privacy expectations that would bar the intrusion.⁴⁵ If Justice Kennedy is in fact arguing that the intrusions are reasonable, his real argument is that other governmental concerns are so important that the intrusions are not unreasonable within the meaning of the fourth amendment. "Expectations" are not relevant to this issue — it requires a balancing of burdens and benefits.

In a generally overlooked footnote, Justice Blackmun, writing for the Court in 1979, admitted that the expectations test is wrong:

[I]f the Government were suddenly to announce on nationwide television that all homes henceforth would be subject to warrantless entry, individuals thereafter might not in fact entertain any actual expectation of privacy regarding their homes, papers, and effects. Similarly, if a refugee from a totalitarian country, unaware of this Nation's traditions, erroneously assumed that police were continuously monitoring his telephone conversations, a subjective expectation of privacy regarding the contents of his calls might be lacking as well. In such circumstances, where an individual's subjective expectations had been 'conditioned' by influences alien to well-recognized Fourth Amendment freedoms, those subjective expectations obviously could play no meaningful role in ascertaining what the scope of Fourth Amendment protection was. In determining whether a 'legitimate expectation of privacy' existed in such cases, a normative inquiry would be proper.⁴⁶

Unfortunately, he did not follow this line of thought further. Had he done so, he would have discovered that the "normative inquiry" would not be about "expectations" but about the privacy that ought to be guaranteed by the fourth amendment so that a particular intrusion is or is not "unreasonable" within the meaning of the amendment.

44. *Skinner v. Railway Labor Executives' Ass'n*, 109 S. Ct. 1402, 1418-19 (1989).

45. *See id.* at 1419-20.

46. *Smith v. Maryland*, 442 U.S. 735, 740-41 n.5 (1979).

Indeed, in the customs and railway workers cases, Justice Kennedy's primary inquiry was whether the government interest justified departure from the usual warrant and probable cause requirements embodied in the fourth amendment. His discussion of expectations was a needless detour.

INDUCED RELIANCE — THE RELIANCE INTEREST IN CONTRACTS

On the other hand, in some cases the actors' actual expectations do color the situation. Contractual promises induce reliance, and it does seem appropriate that the law vindicate such expectations. But in their seminal article on reliance, Professors Fuller and Perdue are bothered by the same circularity alluded to above.⁴⁷ It is true that breach of a promise impoverishes the promisee by taking away a valuable asset relied on by the promisee, but the authors could not accept this as reason for the law to protect the reliance interest. They thought this begged the question because the law made the promise valuable by standing ready to enforce it. "The expectancy,' regarded as present value, is not the cause of legal intervention but the consequence of it."⁴⁸ They then concluded that "courts have protected the expectation interest because they have considered it wise to do so."⁴⁹ Because one can rely upon the law to enforce promises, one can then afford to rely upon the promises themselves, and this facilitates credit.⁵⁰ The wisdom of establishing a credit economy produced this legal development.

Although there is some truth in this view, it overstates the role of law. Patterns of reliance occur in many institutions even though there is no legal enforcement mechanism. Nations enter treaties. Fellow legislators agree to support each other's legislation. People make engagements to marry. Gamblers bet on sporting events.⁵¹ Of course, the lack of legal remedies in these situations can be explained. There is no super-sovereign whose writ can run against a sovereign nation. In the other

47. Fuller & Perdue, *The Reliance Interest in Contract Damages*: 1, 46 YALE L. J. 52, 59-60 (1936).

48. *Id.*

49. *Id.* at 60.

50. *Id.* at 62.

51. The fact that many betting contracts are illegal may have some bearing on their unenforceability, but even legal betting contracts are denied enforcement in Nevada. See *Sea Air Support, Inc. v. Hermann*, 96 Nev. 574, 575, 613 P.2d 413, 414 (1980) and cases cited therein.

cases, judicial intervention is deemed inappropriate for a number of reasons. But my point is that reliance nevertheless occurs in those situations. It arises naturally in certain relationships in response to their institutional context; and the presence or absence of legal remedies in that context is only one matter to be considered. Very few promises are isolated events. Many are part of a continuing relationship or a web of relationships. Promises are kept to preserve such relationships and to preserve a reputation which will facilitate other valuable relationships. This need to sustain relationships makes promises reliable and hence valuable. The prospect of a legal remedy is often insufficient. For example, bargainers who foresee that they will have to sue to obtain promised benefits are likely to reject the deal at the outset.

Moreover, in many situations, actors have, or should have, protected themselves against disappointment. As Thurman Arnold observed, attitudes toward undertakings have changed over the years.⁵² At one time, one who broke a promise was considered akin to a thief. Today, it is recognized that each promisee has taken a risk, one which should be anticipated and provided for. Consequently, some blame falls on the promisee who takes an improvident risk.⁵³ In this perspective, complete reliance on others' undertakings is improvident. Persons should recognize that their expectations will sometimes be disappointed. Prudent reliers will recognize risks and take precautions. Of course, Arnold was thinking primarily of the risk of insolvency, not duplicity; but both risks are real and the law gives little effective protection against either one, given the expense of seeking compensatory relief. Perhaps, then, the availability of a legal remedy for breach of contract is relevant primarily to the amount of risk actors must anticipate and the extent to which they ought to attempt to minimize that risk by hedging, diversifying and taking other precautions.

CONCLUSION

Logical connections do not parallel functional ones. An institution is a galaxy of rules, customs, habits, practices, understandings and expectations. These elements come together, mutually supporting one another. It is not logical, therefore, to attempt to fashion the rules governing an institution from the

52. T. ARNOLD, *THE FOLKLORE OF CAPITALISM* 231-32 (1937).

53. *Id.* Arnold suggested that this change of attitude explains why imprisonment for debt was once considered appropriate but no longer is.

expectations the institution engenders, any more than it is logical to fashion the expectations from the governing rules. (As the above examples of treaties, social engagements and political promises indicate, the mere fact that we deem it desirable that many promises induce reliance does not mean that all such promises should be legally enforceable.) And asking "what expectations do we wish to foster?" is no more enlightening than asking "what rules to we want to enact?" The judge who is seeking to formulate rules according to some principle of desirability — be it "justice" or some other value — will envision participants in the regulated activity with a set of values like those of the judge and will act accordingly. Consequently, when judges seek to vindicate a perceived reliance interest, they are usually seeking to further their own values. If they also tell us why the reliers' values are appropriate and why the reliance, therefore, is justified, their arguments from reliance are merely a needless detour. They ultimately tell us why they believe their edict is a just one. If they refer to reliance and stop at that, however, they have invoked a principle that does not point to only one conclusion, and they have failed to articulate the reason for their action.